

CLERK OF THE COURT

In The

Supreme Court of the United States

MARTIN BYRD QUILLEN, SR.,

Petitioner,

v.

EASTER P. MOSES, ESQ.,
CHARLES H. SMITH, III, ESQ.,
CHRISTOPHER RAINES, AND
MOSS TRUCKING COMPANY, INC.,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Virginia**

PETITION FOR A WRIT OF CERTIORARI

MARTIN BYRD QUILLEN, SR.
Pro Se
P.O. Box 145, Rt. #7
Gate City, Virginia 24251
(276) 386-7372

PETITION FOR A WRIT OF CERTIORARI

Martin Byrd Quillen, Sr., Pro Se, petitions for a writ of certiorari to review the order of the local Circuit Court and the Supreme Court of Virginia.

OPINIONS BELOW

The opinions of the Courts are attached to this petition in the petitioner's appendix.

JURISDICTION

This Court has jurisdiction as the final Court of the land over the decision of the highest court of each state.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The questions presented involve the Fourteenth Amendment to the United States Constitution in that all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without the due process of law; nor deny to a person within its jurisdiction the equal protection of the laws.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the *male* inhabitants of such state, *being twenty-one years of age*, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support

the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT

The petitioner, Pro Se, filed the appeal to the Supreme Court of Virginia via priority mail dated January 7, 2005. The petitioner was notified on January 12, 2005 that although his petition for appeal was timely filed, it was not sent to this court via certified/registered mail receipt pursuant to Rule 5:5 (Appendix page 12). Therefore, this Court dismissed the petition for appeal dated February 18, 2005 (Appendix page 17). The Court acknowledged receipt of petitioner's letter of January 19, 2005 as a motion for extension of time to file petition for appeal (Appendix page 16). A Court order dated February 18, 2005 states that on January 24, 2005 the petitioner filed a letter requesting that the petition for appeal be considered timely filed. The Court denied the request and dismissed the petition for

appeal (Appendix page 17). On March 4, 2005 the petitioner filed a Petition for Rehearing of the judgment rendered on the 18th day of February, 2005 (Appendix page 18). A motion requesting an exception to the electronic filing requirement was filed by U.S. certified mail to the Court on March 23, 2005, however the Court order granting the motion dated April 22, 2005 indicates the filing date as March 28, 2005 (Appendix page 19). The petitioners March 4, 2005 petition for rehearing to set aside the order dated February 18, 2005 was denied by the Court on June 17, 2005 (Appendix page 20).

REASONS FOR GRANTING THE WRIT

The petitioner's, Pro Se, belief is that his petition for appeal was timely and properly filed with this Court. This petitioner, Pro Se, was unaware of Rule 5:5 at the time of mailing of petition for appeal. On December 13, 2004 the petitioner was in receipt of December 10, 2004 letter from the chief deputy clerk, Douglas B. Robelen, addressing filing an appeal in the Virginia Supreme Court (Appendix page 5) with a copy of Supreme Court Rule 5:17 enclosed thereto (Appendix page 6).

Petitioner, pro se, by phone sought information as to what are the procedures entailed in the filing of a petition for appeal by this court and during this inquiry petitioner, pro se, also queried whether or not the petition for appeal was required to physically be in the hands of court clerk by the due date. Chief deputy clerk asked if I would hand deliver or mail petition wherefore I responded "My preference would be to hand deliver however due to the distance and possible time restrictions petitioner may encounter being a pro se petitioner I would mail the petition to the Court where as chief dieputy clerk, Douglas B. Robelen

responded "the court recognizes the post office mailing date as being the filing date for petition (for appeal)" therefore without receipting any other information or rules from the court pertaining to mailing of the petition for appeal I relied upon what Mr. Robelen had previously stated to petitioner, pro se. The Petition for appeal was mailed priority mail from an out-of-state U.S. Post Office at 4:01:27 p.m. (Appendix page 15) on January 7, 2005 and placed in the 5:50 p.m. outgoing mail on same date and was acknowledged received by Court Clerk's office on January 11, 2005 per January 12, 2005 letter from Chief Deputy Clerk. (Appendix page 10) It was not until after the petitioner filed his petition for appeal on January 07, 2005 that he was made aware of supreme court rule 5:5 (Appendix page 12).

It is the belief and the contention of the petitioner that the petition for appeal was timely and properly filed by direction of the clerk of this Court.

CONCLUSION

In conclusion the petitioner, Pro Se, requests that the Petition for Writ of Certiorari be granted and be given the proper due process by giving him a hearing or appeal on the merits of his objection to attorney fees.

Respectfully submitted,

MARTIN BYRD QUILLEN, SR.

Pro Se

P.O. Box 145, Rt # 7

Gate City, VA 24251

APPENDIX

VIRGINIA:

**IN THE CIRCUIT COURT
FOR THE COUNTY OF WYTHE**

**MARTIN BYRD QUILLEN,
SR.,**

Plaintiff,

vs.

**CHRISTOPHER RAINES
and MOSS TRUCKING
COMPANY, INC.,**

Defendants.

FINAL ORDER

Case No. 03-10

JURY DEMANDED

The parties brought this case before the court and said that they have settled this action on terms satisfactory to all of them.

Accordingly, on joint motion of the parties, the Court **ORDERS** the following:

1. Counsel for plaintiff shall ascertain and satisfy all liens on the settlement proceeds before disbursing any funds to plaintiff and/or counsel, including the asserted attorneys' lien of attorney Easter Moses.

2. This action is dismissed with full prejudice.

3. The clerk is directed to send an attested copy hereof to counsel of record.

ENTER this 24th day of March, 2004.

/s/ J. [Illegible]

Judge

APPROVED FOR ENTRY:

/s/ Charles H. Smith
Charles H. Smith, III
Va. Bar No. _____
Attorney for Plaintiff
GENTRY LOCKE RAKES
& MOORE
P.O. Box 40013
Roanoke, Virginia, 24022-0013

/s/ W. T. Wray
William T. Wray, Jr.
TN BPR No. 001355

/s/ Matthew H. Wimberley
Matthew H. Wimberley
Va. Bar No. 51151
TN BPR No. 022346

Attorneys for Defendants
HUNTER, SMITH &
DAVIS, LLP
P.O. Box 3740
Kingsport, TN 37664

App. 3

VIRGINIA:

*In the Court of Appeals of Virginia on Wednesday the
1st day of December, 2004.*

Martin Byrd Quillen, Sr., Appellant
against Record No. 2541-04-3
 Circuit Court No. CL03-10

Christopher Raines and Moss Appellees
Trucking Company, Inc.,

From the Circuit Court of Wythe County

It appears that this Court does not have jurisdiction
over this case. Accordingly, the case hereby transferred to
the Supreme Court of Virginia pursuant to Code § 8.01-
677.1.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: /s/ A. John [Illegible]
Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 8th day of December, 2004.

Martin Byrd Quillen, Sr.,	Appellant,
against Circuit Court No. CL03-10	
Christopher Raines et al.,	Appellees.

From the Circuit Court of Wythe County

This case having been transferred from the Court of Appeals of Virginia, the appellant shall have 30 days from the date of this order to file a petition for appeal in the Supreme Court of Virginia.

A Copy,

Teste:

Patricia H. Krueger, Clerk

By: /s/ [Illegible] Edwards
Deputy Clerk

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[SEAL]

SUPREME COURT OF VIRGINIA

PATRICIA H. KRUEGER, CLERK

SUPREME COURT BUILDING

100 NORTH 9TH STREET, 5TH FLOOR

RICHMOND, VIRGINIA 23219

(804) 786-2251 V/TDD

FAX: (804) 786-6249

DOUGLAS B. ROBELEN

CHIEF DEPUTY CLERK

December 10, 2004

Mr. Martin B. Quillen

P.O. Box 145

Gate City, VA 24251

Dear Mr. Quillen:

Pursuant to our recent telephone conversation, I am enclosing a copy of Rule 5:17, which addresses filing a petition for appeal in this Court.

Sincerely,

/s/ Douglas B. Robelen

Douglas B. Robelen

Chief Deputy Clerk

DBR/srd

Enclosure
